

# HUGHES • ELLZEY LLP

TELEPHONE  
(713) 322-6387

2700 POST OAK BLVD., SUITE 1120  
GALLERIA TOWER I  
HOUSTON, TEXAS 77056  
[WWW.HUGHESELLZEY.COM](http://WWW.HUGHESELLZEY.COM)

FACSIMILE  
(888) 995-3335

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**VIA CM/ECF**

Honorable Vince Chhabria

MDL 2843, *In Re: Facebook, Inc., Consumer Privacy User Profile Litigation*  
United States District Court, Northern District of California

Dear Judge Chhabria:

My law firm represents the plaintiffs and proposed class in *Lodowski v. Facebook, Inc.*, 4:18-cv-00907 (S.D. Tex.), the only federal case from Texas transferred to this Court for MDL proceedings. Pursuant to the Court's Pretrial Order No. 1 dated June 7, 2018, I submit this application for appointment of lead counsel in this MDL 2843, *In Re: Facebook, Inc., Consumer Privacy User Profile Litigation*. My law firm, HUGHES ELLZEY, LLP, is a civil litigation law firm based in Houston focused primarily in the areas of class action litigation and consumer protection in both state and federal courts nationwide. We are currently litigating other complex consumer class actions in federal courts nationwide against large corporations such as SiriusXM, Quicken Loans, and Time Warner Cable.

**1. Professional Experience with MDLs and the subject matter of this Litigation**

In 2008, I managed and coordinated MDL litigation against Ford Motor Company on behalf of all plaintiffs in Texas MDL No. 07-0953, *In re Ford Motor Co. Speed Control Deactivation Switch Litig.*, 285 S.W.3d 185 (Tex. Jud. Pan. Mult. Lit. 2008). As part of my MDL responsibilities at the firm designated as lead counsel, I attended monthly MDL hearings before the Honorable Scott Jenkins of the 53rd District Court in Travis County, Texas (Judge Jenkins has served as the presiding judge of the 53rd District Court since January, 2001), argued on behalf of plaintiffs at MDL hearings, drafted and filed the master complaint, drafted global discovery requests, maintained monthly billing records of common case costs on behalf of all plaintiffs, and organized conference calls with other plaintiffs' counsel and opposing counsel concerning the MDL litigation.

I've been appointed class counsel in a number of recent class actions, and several federal Judges have commented on my experience and skill in litigating complex class action matters. For example, Hon. Troy L. Nunley, U.S. District Court Judge for the Eastern District of California, recently acknowledged in his final approval order that "Plaintiff's counsel [Hughes Ellzey] has extensive experience in TCPA class action litigation and has often served as class counsel in such cases." *Robinson v. Paramount Equity Mortgage, LLC*, Case No. 2:14-cv-02359-TLN (E.D. Cal. July 13, 2017) (Doc. 27, p. 9).

Hon. Marcia G. Cooke recognized our firm's talents last year in her order approving class counsel's fees, stating the *Boise v. Ace* action was "prosecuted by Plaintiff's Counsel [Hughes Ellzey] with skill, perseverance, and diligence." See Case No. 1:15-cv-21264-MGC (S.D. Fla. Oct. 18, 2017) (Dkt. No. 101). Similarly, in *Teofilo Vasco, et al. v. Power Home Remodeling Group LLC*, Hon. Mark A. Kearney, U.S. District Court Judge for the Eastern District of Pennsylvania, found that "Vasco's counsel, W. Craft Hughes, is experienced in class action litigation under the [TCPA] Act" upon granting final approval to the nationwide TCPA class settlement at issue. See Case No. 2:15-cv-04623 (E.D. Pa. October 12, 2016) (Dkt. No. 43, pp. 7-8). Also, in *John Colin Suttles, et al. v. Specialty Graphics, Inc.*, U.S. District Judge Robert L. Pitman of the Western District of Texas found Hughes Ellzey to be "experienced counsel...that meets the requirements of Fed. R. Civ. P. 23" when certifying a nationwide TCPA class and appointing Hughes Ellzey class counsel. See Case No. 1:14-cv-00505 (W.D. Tex. April 25, 2016) (Dkt. No. 73, pp. 2-3).

## **2. Familiarity with the Claims before this Court**

I understand the technical issues and programming codes necessary to diligently prosecute this action and make strategic legal decisions in this Litigation. I obtained my undergraduate degree in computer science and information systems. I was recently invited to give a presentation at the Harris County Democratic Lawyer's Association meeting about privacy litigation. *Privacy & Class Action Litigation*, Texas Bar CLE, Houston, TX (2018).

My firm has been appointed class counsel in a number of complex class actions. See, e.g., *Justin Mark Boise v. Ace American Ins. Co.*; Case No. 1:15-cv-21264-MGC (S.D. Fla. Oct. 18, 2017) (nationwide TCPA class settlement creating \$9.76 Million non-reversionary common benefit fund); *Matthew Scott Robinson v. Paramount Equity Mortgage, LLC*; Case No. 2:14-cv-02359-TLN-CKD (E.D. Cal. July 13, 2017) (TCPA); *Teofilo Vasco, et al. v. Power Home Remodeling Group LLC*; Case No. 2:15-cv-04623 (E.D. Pa. Oct. 12, 2016) (TCPA); *John Colin Suttles, et al. v. Specialty Graphics, Inc.*; Case No. 1:14-cv-00505 (W.D. Tex. April 25, 2016) (TCPA); *Ludette Crisler, et al. v. Audi AG, Volkswagen AG, et al.*, Case No. 2:11-cv-01719 (C.D. Cal. Oct. 30, 2013) (products); *Gretchen Patch, et al. v. Millennium Products, Inc.*, Case No. BC448347 (Superior Court of California, Los Angeles County, April 3, 2012) (products). In addition to my class action practice, I've obtained at least seventeen jury verdicts as lead counsel in civil litigation matters totaling over \$22 Million during the past few years.

## **3. Present and Future Ability to Commit to Time-Consuming Litigation**

I have the present and future ability to commit myself and my firm's resources to this litigation. My firm has four attorneys, an organized and dependable staff, and the resources necessary to successfully advance this litigation in a timely manner. I understand lead counsel is tasked with many responsibilities including the coordination and oversight of MDL activities for the plaintiffs. In fulfilling these responsibilities, if given the opportunity to serve as lead counsel, I will: (1) personally appear at all case management conferences and hearings, (2) propose important agenda items before the case management conferences, (3) draft case management orders for the orderly and efficient litigation of this case, (4) coordinate and conduct discovery on

behalf of the plaintiffs, consistent with the requirements of the Local Rules of the Northern District of California, and (5) consult with experts and retain testifying expert witnesses.

**4. Ability to Work Cooperatively with Others**

I work cooperatively with the Court, its staff, and other lawyers on both sides of the docket. We will continue being professional, courteous, and cooperative in this MDL proceeding.

**5. Sufficient Resources to Advance the Litigation in a Timely Manner**

Hughes Ellzey will allocate funds reasonably necessary to prosecute and advance this litigation, including the creation of a separate litigation account for payment of such costs and expenses. We have already allocated a significant amount of funds to cover these anticipated costs, expenses, travel, and expert fees incurred during the pendency of this Litigation.

**6. Ability to Maintain Reasonable Fees and Expenses**

I maintain reasonable fees and expenses in all cases – regardless of any lead counsel appointments in this MDL. Other federal courts have consistently agreed and approved our fees and expenses as being reasonable. Most recently, Hon. Marcia G. Cooke, U.S. District Court Judge for the Southern District of Florida, “considered and found that the fee sought by Plaintiff’s Counsel [Hughes Ellzey] is fair and reasonable in the circumstances of this case and consistent with similar TCPA class settlements.” *See Case No. 1:15-cv-21264-MGC (S.D. Fla. Oct. 18, 2017)* (Dkt. No. 101) (ORDER granting our firm’s recent request for attorneys’ fees totaling 25% of the \$9.8 Million common fund and reimbursement of more than \$150,000 of expenses in a nationwide class settlement).

While mindful of the Court’s tentative view that nothing is needed by way of leadership structure other than lead counsel, I believe a larger leadership structure may be beneficial given the specific facts and circumstances of this action. I’m prepared to lead this litigation and would be honored to serve as lead counsel or a position of leadership if this Court deems it appropriate. My resume is attached as Exhibit 1 and a list of the firms and other MDL counsel who support my application is attached as Exhibit 2.

Respectfully Submitted,

**HUGHES ELLZEY, LLP**

/s/ W. Craft Hughes  
W. Craft Hughes  
2700 Post Oak Blvd., Ste. 1120  
Houston, TX 77056  
Phone (713) 322-6387  
Fax (888) 995-3335  
[craft@hugesellzey.com](mailto:craft@hugesellzey.com)